

IN THE MATTER OF	:	BEFORE THE
LINDA G. CROMWELL	:	HOWARD COUNTY
t/a BEING THERE SENIOR CARE	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-040V

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DECISION AND ORDER

On October 17, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Linda G. Cromwell, t/a Being There Senior Care, Petitioner, for a variance to reduce the parking requirement for a home occupation from one non-resident employee space to zero in an R-SC (Residential – Single Cluster) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Linda Cromwell and Herb Cromwell testified in support of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is the owner of the subject property, known as 8021 Branch Wood Court, which is located in the 1st Election District on the south side of Branch Wood Court about 1,600 feet southeast of the intersection of Old Stockbridge Drive and Maryland Route 108 in Ellicott City (the “Property”). The Property is referenced on Tax Map 37, Grid 8 as Parcel 620, Lot 12.

2. The Property is rectangular in shape and consists of about 2,250 square feet, or .052 acres. The lot is 25 feet wide and 90 feet deep. The Property is improved with a 2-story, single-family attached dwelling. The Petitioner’s townhouse is an end-of-group unit among a group of four units. The Property is part of the Woodlands Park Section 2, Area 2 residential subdivision. The lots in the community are nearly identical in size, as are the dwellings. None of the lots have on-site parking; all parking is located on Branch Wood Court. According to the Petitioner, the parking spaces are not designated for particular units.

3. The Petitioner proposes to operate a home occupation – a nurse staffing agency – within her home. The Petitioner proposes to employ one non-resident employee on a part-time basis. The employee, who is disabled, does not drive and will be picked up and taken home by the Petitioner. The Petitioner stated that the business will not receive customers but will conduct all of its business by phone and computer. Because there is no on-site parking available for the employee, however, the proposed home occupation does not comply with Section 133.D.1.b, which provides that, in addition to the required parking for the principal residence, parking for a home occupation must consist of at least “one space per non-resident employee working on the premises, plus one space if business-related visitors visit the premises.”

4. Vicinal properties are also zoned R-SC and are residential lots improved with single-family attached homes in the Woodland Park subdivision. To the north of the homes on Branch Wood Court is a community parking lot and 5,184 square foot community-owned open space lot. To the south of the Property are other open space lots.

6. The Petitioner testified that her husband is not at home during the day and that there are plenty of parking spaces nearby that go unused during the day

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

1. The standards for variances are contained in Section 130.B.2.a of the Regulations.

That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

For the reasons stated below, I find that the requested variance does not comply with Section 130.B.2.a(1), and therefore must be denied.

2. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thusly:

“In the zoning context, the ‘unique’ aspect of a variance requirement *does not refer to the extent of improvements upon the property*, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic *not shared by other properties in the area*, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.”

North v. St. Mary’s County, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Petitioner has not shown that the Property is in any way unique such that the home occupation employee parking requirement of Section 133.D.1.b will disproportionately impact it. The evidence presented indicates that the Property is equal or

larger in size than the other properties in the neighborhood. While it is true that the Property is too small to accommodate an on-site parking space, this is not a unique condition – it is in fact a condition shared by all of the properties in the community.

The Petitioner argues that a parking space is not necessary because her employee is disabled and does not drive to work. That may be so, but it does not constitute a “unique physical condition peculiar to the particular lot” or a “practical difficulty,” which is required in order for me to grant a variance. Any practical difficulty must relate to the uniqueness of the land itself, and not to the personal circumstances of the owner. *Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2d 959 (2006).

Consequently, the Petitioner has not produced sufficient evidence to pass the first prong of the variance test; that is, she has not shown that the Property itself has any unusual or unique characteristic that necessitates the variance requested. For this reason, the variance request fails to comply with Section 130.B.2.a(1).

Conclusion

It is well established in Maryland law that any practical difficulty must relate to the land, and not to the personal convenience of the particular owner of the land. *Cromwell*, id. While it may be desirable for the Petitioner to be able to conduct a home occupation with one employee on her Property, it must be accomplished within the restrictions of the Zoning Regulations.

It is not the role of zoning, nor should it be, to accommodate the personal wants or circumstances of each property owner. Rather, the purpose of zoning is to promote the orderly development of land through the imposition of uniform regulations and standards.

Variances to these standards are therefore to be sparingly granted, and only under exceptional circumstances. *Cromwell*, 651 A.2d at 430.

Simply put, if I were to grant a variance to this Petitioner to accommodate her particular circumstances, then I must do so for every property owner who is similarly situated. Once granted, a variance is permanent and irreversible. Under such a system, variances would become the rule, and the Zoning Regulations would be rendered meaningless.

The Petitioner in this case has not presented sufficient evidence to show that exceptional circumstances exist to warrant the grant of a variance to the home occupation parking requirements. Consequently, I am compelled to deny the request.

As I noted to the Petitioner during the hearing, however, Section 133.B.4 may provide an alternative method by which the Petition could obtain relief from the on-site parking requirement. That regulation provides that a parking requirement may be met by an off-site parking facility if, among other things, the petitioner can provide proof, such as recorded covenants, that the continued use of the parking area is “guaranteed” throughout the life of the home occupation. In a subsequent submittal, however, the Petitioner indicated that the covenants governing the parking facility in her community do *not* designate parking spaces for particular units. Consequently, it would be incumbent upon the Petitioner to provide some other proof, such as an agreement with her homeowner association to permit her to use a designated parking space, which would guarantee use of the parking area. In any event, compliance with Section 133.B.4 is a determination to be made by DPZ, and not me.

ORDER

Based upon the foregoing, it is this **15th day of November 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Linda G. Cromwell, t/a Being There Senior Care, for a variance to reduce the parking requirement for a home occupation from one non-resident employee space to zero in an R-SC (Residential – Single Cluster) Zoning District is hereby **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.